IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24595 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MODASA ROAD TRANSPORT CO OP SOCIETY LTD - Petitioner(s)

Versus

DEPUTY COLLECTOR OFFICE OF THE DY.COLLECTOR & 3 - Respondent(s)

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Appearance :

MR BHARAT JANI for Petitioner(s) : 1,
MS ARCHANA RAVAL ASST GOVERNMENT PLEADER for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/01/2006

ORAL JUDGMENT

1. Rule. Ms.Archana Raval, learned AGP waives service of Rule on behalf of the respondents.

2. With the consent of the learned advocates appearing on behalf of the parties, the matter is taken up for final hearing today.

3. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Deputy Collector, Stamp Duty Valuation, Himatnagar dated 26.2.2004 passed under Section 32(A) of the Bombay Stamp Act by which the petitioner is directed to pay deficit stamp duty of Rs.36,68,480/- plus Rs.250/- by way of penalty in all Rs.36,68,730/- with regard to the document No.1687 executed and presented before the Sub-Registrar, Modasa dated 21.10.2003 as well as communication from the Deputy Superintendent of Stamps, Gujarat State, Gandhinagar dated 16.6.2004 in not entertaining the appeal preferred by the petitioner against the aforesaid order under Section-32-B of the Act on the ground that the same is filed after prescribed period of limitation.

4.Shri Bharat Jani, learned advocate appearing on behalf of the petitioners has vehemently submitted that the impugned order dated 26.2.2004 is contrary to the provisions of Rule-4 of the Bombay Stamp (Determination of Market Value of Property) Rules; 1984 and as such, no particulars and/or reasons are given by the authority for determining the valuation of the property in question at Rs.3,56,62,500/-. It is also further submitted that as such the impugned order came to be passed on the basis of the notice under Rule-4 of Rules; 1984 by which the petitioner was called upon to prove that the valuation of the property/land in question is at Rs.29,08,125/-. He has relied upon the judgment of this Court in case of *Budhabhai Merabhai Bharwad V. State of Gujarat reported* in (2005) 8 GHJ Page-374 : 2005 (2) GLR 1792. The learned advocate for the petitioner has also placed reliance on another decision of the learned Single Judge of this Court rendered in case of PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS. Reported in 2003 (1) GLR 454, wherein it is held that when the Chief Revenue and Controlling Authority passed an order in

cyclostyled form wherein some gaps were filled up and few sentences were added, it is an order passed without proper application of mind and not speaking order and the same cannot be sustained in eye of law.

5.Ms.Archana Raval, learned AGP appearing on behalf of the respondents is not in a position to dispute that in the impugned order dated 26.2.2004 no particulars are given that on what basis the Deputy Collector has come to the conclusion that the valuation of the property in question is at Rs.3,56,62,500/-. The learned AGP is also not in a position to dispute that as such the controversy in question is directly covered by the judgment of this Court in case of ***Budhabhai Merabhai Bharwad and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.***(supra). However, the learned AGP has submitted that the valuation of the property in question is fixed on the basis of the Jantri.

6.Heard the learned advocates appearing on behalf of

the parties.

7.I have gone through the order passed by the Deputy Collector. In the impugned order, no particulars and/or basis have been mentioned by the Deputy Collector that on what basis, he has come to the conclusion that the valuation of the property in question is at Rs.3,56,62,500/-. Nothing is on record to suggest that the petitioner has been served with any material relied upon by the Deputy Collector, if any, for ascertaining and/or fixing the valuation of the property in question at Rs.3,56,62,500/-. It also prima-facie appears that even the impugned order has been passed on the basis of the notice issued under Rule-4 of the aforesaid Rules and by which the petitioner was called upon to prove that the valuation of the property is at Rs.29,08,125/- and no more. This Court has remanded the matter to the Deputy Collector for deciding the same afresh after issuing proper notice under Rule-4 of Rules 1984 and after giving an opportunity to the petitioner and after providing the material upon which the

Deputy Collector wants to rely to determine the valuation of the property in question.

8. For the reasons stated above and for the reasons stated in the judgment of this Court in case of BHUDHABHAI MERABHAI BHARWAD and another decision PRADHYUMANBHAI MOHANLAL PATEL V. STATE OF GUJARAT & ORS.(supra), the petition is allowed partly. The impugned order passed by the Deputy Collector, Stamp Duty Valuation, Himatnagar dated 26.2.2004 as well as the order passed by the communication from the Deputy Superintendent of Stamps, Gujarat State, Gandhinagar dated 16.6.2004 in not entertaining the appeal preferred by the petitioner against the aforesaid order under Section-32-B of the Act on the ground that the same is filed after prescribed period of limitation are hereby quashed and set aside and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Himatnagar for deciding the same afresh in accordance with law and on merits and after issuing proper notice under Rule-4 of the Rules of 1984 and after giving an opportunity to the petitioner and after supplying

necessary material to the petitioner upon which the Deputy Collector proposes to rely while determining and/or ascertaining the valuation of the land in question. The said exercise to be done within a period of 6 months from today. It is, however, made clear that if any amount is already paid/deposited by the petitioner pursuant to the order passed by the Deputy Collector, Stamp Duty Valuation, Himatnagar dated 26.2.2004 then in that case, the respondents are not required to refund the said amount at this stage and the same be treated as deposit and it would be subject to the ultimate outcome of the proceedings on remand.

9. As the petitioner has not made accurate statement in the petition with regard to service of the original order passed by the Deputy Collector, Stamp Duty Valuation, Himatnagar dated 26.2.200, though the petition is allowed and the matter is remanded to the Deputy Collector, Stamp Duty Valuation, Himatnagar, the petitioner is required to pay cost of the respondents which Shri Jani, learned advocate for the petitioner has agreed to pay. Accordingly, the cost is quantified at

Rs.5,000/- which the petitioner is directed to deposit with the Deputy Collector, Stamp Duty Valuation, Himatnagar within a period of four weeks from today. If the amount of cost is not deposited and/or paid within four weeks from today, the order passed by this Court will not be given effect to and the order passed by the Deputy Collector, Stamp Duty Valuation, Himatnagar dated 26.2.2004 would stand revived automatically.

10.Rule is made absolute to the aforesaid extent.

Direct Service is permitted.

(M.R.SHAH, J.)

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